IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.1700 OF 2004
IN
WRIT PETITION NO.679 OF 1997

1. Mrs. Khudeja T. Poonawalla,
aged about 50 years.

2. Mrs. Shirinbai A. Poonawalla,
aged about 45 years.

Both residing at 906, Bootee Street,
Pune 411 001.

3. Mrs. Rehanbai E. Poonawalla,
aged about 46 years,
residing at 1970, Gaffar Baig
Road, Pune 411 001. .... Applicants

- Versus -

1. U.M. Mohammed Moosa,
aged Adult, occupation:
Business, having place of
business at 585-86/87 Sachapir
Street, Pune 411 001.

2. Rusi S. Irani,
aged Adult, occupation:
Business, residing at Royal
Bakery 200 M.G. Road,
Pune 411 001.

3. Smt. Kharamanbai Sheroo Irani,
aged Adult, occupation:
Business, residing at 616-A
Sachapir Street, Pune 411 001.

4. Shapur Sheriar Irani,
aged Adult

5. Ms Shehnaz Sheriar Irani,
aged Adult

Nos.4 and 5 residing at C/o Dr.
Fatima Avenue Kutch Avene Lane
No.2 Block No.5, First Floor
Teharan Irani- .... Respondents

Shri G.R. Rege h/for Ms Shakuntala A. Mudbidri for the Applicants.

Shri V.S. Gokhale for the Respondent No.1/original Petitioner.

Shri K.Y. Mandlik for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 10, 2004

ORAL ORDER:

1. Heard the learned Advocates for the parties and perused the application and the affidavits filed along with the annexures, filed by the parties.

2. By the present application, the applicants (who are the original respondent Nos.1 to 3 in the Writ Petition No.679 of 1997 and the plaintiffs in the Suit No.1263 of 1982), pray for vacating the order passed by this Court on 6-2-1997 so as to enable the applicants to seek execution of the order of eviction passed against the respondent No.1 herein (who is the original petitioner in the said petition and hereinafter called as "the petitioner").

3. Few facts relevant for the order in the matter are that by the decree dated 7-9-1990 the trial Court decreed the suit filed by the applicants against the petitioner on the ground of sub-letting of the suit

premises. The appeal filed by the petitioner came to be dismissed by the lower Appellate Court on 11-12-1996. The petitioner therefore filed the Writ Petition No.679 of 1997 in January, 1997, and while issuing rule in the petition, interim relief in terms of the prayer clause (b) of the writ petition came to be passed on 6-2-1997. The prayer clause (b) of the petition reads thus:-

> "During the pendency and final disposal of the petition the execution/implementation/operation of the judgment and order dated 11.12.96 passed by the District Judge, Pune, in Civil Appeal No.926/90 and 944/90 arising out Judgment and Order dated 07.09.1990 passed by the VIIth Additional Judge, Small Causes Court, Pune, in Civil Suit No.1263 of 1982 be stayed."

Since the petitioner did not comply with the usual undertaking given at the time of grant of stay of execution of the decree for eviction, the Civil Application No.9927 of 1998 came to be filed by the applicants herein. Simultaneously, Civil Application (Stamp) No.2726 of 1999 also came to be filed by the petitioner praying that the decree holder be directed to

accept a draft dated 27-1-1999 for Rs.15,000/-, drawn on Syndicate Bank, Colaba Branch, Mumbai towards the arrears of rent and for condonation of delay in making the payment of rent. Both the said applications, upon hearing the parties, came to be disposed of by the order dated 12-3-1999. By the said order dated 12-3-1999 the following directions were issued to the parties:-

> "(i) The decree holder shall accept the draft dated 27.1.99 for Rs.15000/- drawn on Syndicate Bank, Colaba Branch, Mumbai towards arrears of rent till date.
>
> (ii) If there is any further arrears of rent, the tenant/original petitioner is granted four weeks time to pay/deposit the entire arrears of rent till date.
>
> (iii) The future rent from today i.e. for the month of March 1999 and subsequent months shall be paid/deposited by the tenant (original writ petitioner) every month on or before 10th of each succeeding English calendar month.
>
> (iv) If the tenant desires he can

pay/deposit the rent in advance at a time for a period of one year.

(v) Upon compliance, the order dated 30.1.97 shall remain operative till disposal of writ petition."

With the above directions, both the applications were disposed of.

4. It is the contention of the applicants that for the period from April, 1999 till September, 2003 i.e. after the disposal of the said applications by the order dated 12-3-1999, the petitioner deposited the following amount:-

Sr. No.	**Date of Deposit**	**Amount of rent deposited**
1.	7-4-1999	Rs.2400/-
2.	1-4-2002	Rs.1068/-
3.	4-10-2002	Rs.1068/-
4.	28-3-2003	Rs.1068/-
5.	17-9-2003	Rs.1068/-

It is further contention of the applicants that from October, 2003 the petitioner failed to deposit any

amount in contravention of order passed by this Court on 12-3-1999.

5. In reply to the present application, the petitioner has filed three affidavits - the first dated 28-7-2004, the second dated 17-8-2004 and the last dated 22-9-2004. It is the case of the petitioner that during the period from March, 1997 till July, 2004, the petitioner has deposited all the arrears and in that regard the details have been disclosed in the chart annexed to the affidavit dated 17-8-2004 which reads thus:-

Sr. No.	**Date**	**Receipt No.**	**Amount**	**Period**
1.	13/03/97	4277	14,968.00	Dec’89 to Dec’97
2.	02/04/98	17	1,068.00	Jan’98 to June’98
3.	27/08/98	1569	1,068.00	July’98 to Dec’98
4.	07/11/98	2330	1,068.00	Jan’99 to June’99

5.	.....	...	.....	.....
6.	01/04/2000	9	1,068.00	Apr’2000 to Sept’2000
7.	25/08/2000	1159	1,068.00	Oct’2000 to March’2001
8.	22/02/2001	3135 (2551)	1,068.00	Apr’01 to Sept’01
9.	11/09/2001	1345 (1105)	1,068.00	Oct’01 to March 2001
10.	01/04/2002	9	1,068.00	Apr’02 to Sept’02
11.	04/10/2002	1191 (1016)	1,068.00	Oct’02 to Mar’03
12.	28/03/2003	2515 (2095)	1,068.00	Apr’03 to Sept’03
13.	17/09/2003	-	1,068.00	Oct’04 to Mar’04
14.	06/04/2004	-	1,068.00	Apr’04 to

				Sept’04
15.	26/07/2004	-	2,136.00	Oct’04 to Sept’05

6. It is not in dispute that the monthly rent payable was Rs.168/- + Rs.10/- towards water charges. It is also not in dispute that the rent had remained due and payable from December, 1989 onwards and an amount of Rs.14,968/- was tendered in March, 1997. Further, rent for six months from January to June, 1998 was paid in April, 1998. Similarly, in the case of rent from July to December, 1998 and for January to June, 1999 was paid in August and November, 1998 respectively. In other words, as on the day when the order dated 12-3-1999 was passed, the rent upto June, 1999 was already paid excluding the arrears of Rs.15,000/- for the period from December, 1989 to December, 1997 and therefore there was direction in terms of the clause (i) of the said order. The chart filed along with the affidavit dated 17-8-2004, which is quoted above, apparently discloses that the rent was not paid or deposited by the 10th of every succeeding month, as was required to be paid in terms of the clause (iii) of the order dated 12-3-1999, but it was paid at irregular intervals. However, if one peruses the said chart, it appears that the rent had been paid till July, 2004 in advance. Prior to the said

chart, the petitioner had filed an affidavit on 28-7-2004 stating that he had deposited rent upto September, 2005 and in that regard the zerox copies of the receipts were sought to be produced as annexures "A", "B" and "C" to the said affidavit. The claim of the petitioner was sought to be disputed in that regard by the applicants and further copy of the Nazir's report dated 3-8-2004 was produced. On perusal thereof, it was found that the rent for the period September, 2003 to March, 2004 was not deposited in the Court. However, it was sought to be contended by the learned Advocate for the petitioner that the rent was already paid and therefore by the order dated 13-8-2004 he was required to furnish a statement showing the date of the amounts paid and the period covered by such payment and at the request of the said Advocate time was granted till 19-8-2004 for submitting such a statement. Consequent to such time being granted, further affidavit came to be filed on 17-8-2004.

7. If one peruses the copies of the receipts annexed as serial Nos.1 to 15 to the said affidavit dated 17-8-2004, at first glance the same appear to be in consonance with the chart quoted above. However, it is pertinent to note that there are certain interpolations and changes made with reference to the period for which the rent is stated to have been paid under those

receipts, the zerox copies of which are placed on record. When the learned Advocate for the petitioner was asked to produce the original of those receipts, he expressed his inability to produce the same.

8. In the zerox copy at serial No.4 the original recording was in respect of the period from July to December 98 whereas the changes made disclose the same as referring to January 99 to June 99. However, the changes appear to have been initialled by the person issuing the receipt and the said initial tallies with the initial at the bottom of the receipt. The receipt at serial No.8 originally referred to September 2001 to April 2001 but the changes made therein disclose that the reference to "September 2001" has been struck of and it has been written to be the receipt for April 2001 to September 2001. The changes are not initialled at any place. Similar changes are found in the receipt at serial No.11 wherein the changes disclose to have been made from September (2002) to October 2002 and December 02 to March 03. Similarly, the entry in the receipt at serial No.12 is changed from the period of January to April 2003 to the period of April to September 2003. Likewise the entry in the receipt at serial No.13 is changed from the period of May to August to the period fo October to March 04. The receipt nowhere discloses as to which year the month of October relates to. At

this stage it is necessary to refer to the statement made by the petitioner in the said affidavit dated 17-8-2004 wherein he has stated so:

> "I state that while verifying the Receipts at Sr.No.11, 12 and 13, issued by Nazir Small Causes Court Pune, in token of having deposited the amount, I thought that the names of the months wrongly written, I say that I scored out the name of the months, written by the Nazir and wrote the names of the months which were then I felt to be correct. I had no intention whatsoever to mislead anybody or to create a false record; I say that the above mistake done by me is inadvertently for which I tender my unconditional apology to the Hon'ble Court."

The above statement apparently discloses that the petitioner himself had made certain changes in the receipts at serial Nos.11, 12 and 13. At the same time, he admits that the same were done by mistake. Obviously, the receipts at serial Nos.11, 12 and 13 are therefore to be construed as referring to the period as disclosed originally, that is to say that the receipt at

serial No.11 relates to the period from September to December 02, the receipt at serial No.12 relates to the period January to April 2003 and the receipt at serial No.13 relates to the period May to August. It is not known as to which year the period in the receipt at serial No.13 relates to but probably it must be to the year 2003 as the said receipt is dated 17-9-2003 and the figure "4" appears to have been interpolated in the same manner in which the months of October and March are interpolated in the said receipt. Considering the same, obviously the said receipts do not correspond with the entries at serial Nos.11, 12 and 13 in the chart quoted above. Obviously therefore, while on the one hand the petitioner by the chart has represented to the Court that the rent was paid for the period from October, 2002 to March, 2004, under the receipts dated 4-10-2002, 28-3-2003 and 17-9-2003, there was no disclosure of the fact of interpolation and changes by the petitioner in those receipts in relation to the period of payment to which the amount was paid. It is further pertinent to note that there is a clear admission on the part of the petitioner that the facts stated in the affidavits dated 28-7-2004 as well as in the affidavit dated 17-8-2004 were false and that has been stated on oath by the petitioner himself in the affidavit dated 22-9-2004. The statement in that regard reads thus:-

> "I state that I have filed two affidavits i.e. Affidavit No.4999 of 2004 dt.28.07.2004 and Affidavit No.5616 of 2004 dt. 17.08.2004. I state that the facts mentioned in the said affidavits are not correct. There are mistakes committed in the said affidavits while calculating the amounts of rent hence I request the Court to allow me to withdraw the said two affidavits as the Petitioner does not want to rely upon the said Affidavits."

9. While admitting that there were false statements were made in the earlier affidavits, it was sought to be pointed out in the affidavit dated 22-9-2004 that there was mistake while calculating the amounts of rent. The affidavit, however, nowhere discloses any explanation for the misrepresentation of the facts in the sense that though the amounts paid against the receipt at serial Nos.11, 12 and 13 were for the periods different than what was claimed in the chart annexed to the affidavit, and therefore there was no payment for the period as per the interpolation done by the petitioner in those receipts. Simultaneously, there is no explanation for non-payment of the dues for such period. At the sametime, there is absolutely no explanation in the

affidavit in reply as to what prevented the petitioner from not complying with the order dated 12-3-1999.

10. It is sought to be contended in the affidavit dated 22-9-2004 that the petitioner had tendered to the applicants a demand draft dated 27-1-1999 for Rs.15,000/- but the same was returned saying that they do not want to realise the same. It is pertinent to note that all-throughout and till 22-9-2004 no grievance was made by the petitioner regarding non-encashment of such draft by the applicants inspite of having given to them the same in terms of the order dated 12-3-1999. It is also pertinent to note that no grievance regarding the said act on the part of the applicants was made by the petitioner in either of the earlier affidavits. Even the chart which was submitted along with the earlier affidavits nowhere refers to such draft. Obviously that draft must have been cancelled by the petitioner. Undoubtedly, the delivery of the said draft to the applicants would have relieved the petitioner of his liability in relation to Rs.15,000/- consequent to the specific direction issued by this Court in the order dated 12-3-1999. However, fact remains that on return of the said draft by the applicants to the petitioner, the same was accepted by the petitioner without any grievance and even in the affidavit dated 22-9-2004 no grievance in that regard was made by the petitioner.

What therefore follows from the conduct of the petitioner is that the petitioner himself had accepted the contention of the applicants that they were not interested in encashing the said draft and were expecting the petitioner either to pay the rent to them or to deposit the amount in the Court. It was therefore necessary for the petitioner to immediately deposit the said amount in the Court. Admittedly, no attempts were ever made by the petitioner nor there is any explanation for failure in that regard on the part of the petitioner. It is to be remembered that once the amount is due and payable by the tenant, it is his responsibility to discharge the said burden, otherwise to disclose sufficient cause for non-payment of the rent. It is more so when the matter is already in the Court. That apart, in the case in hand, there was the specific order of 12-3-1999 directing the petitioner to pay or deposit the rent by 10th of each succeeding English calender month. In these circumstances, merely because the applicants had refused to encash the draft and having returned the same, the petitioner could not have ignored or neglected in his obligation to clear the rent dues. If the applicants had acted contrary to the directions under the order dated 12-3-1999 in relation to the said draft, it was the duty of the petitioner to bring the said fact to the notice of the Court immediately or to seek appropriate order for discharge

of the liability in relation to the said amount. Nothing has been done by the petitioner in that regard.

11. Considering the facts stated above, therefore, it is apparent that the petitioner failed to deposit the rent for the month from October, 2002 to March, 2003, April to September, 2003 and October to March, 2004 respectively, as sought to be claimed by the petitioner. It is pertinent to note that the chart with reference to the receipt at serial No.13 dated 17-9-2003 claims to be for the period from October to March 04. It is unimaginable that the Nazir would disclose the period in such a manner that the month of the previous year would be recorded after the month of the succeeding year. It could have been October, 2003 to March, 2004 but could never be from October, 2004 to March, 2004. It is not the case of the petitioner that there was any mistake on the part of the Nazir in recording the period. On the contrary, it is the case of the petitioner himself that he had wrongly presumed that there was mistake and therefore himself carried out the alleged corrections inadvertently.

12. In the result, therefore, it is apparent that the petitioner has not complied with the order passed on 12-3-1999 and considering the law laid down by the Apex Court in **Ganpat Ladha v. Sashikant Vishnu Shinde,**

reported in AIR 1978 SC 955, there is no discretion left to the Court once there is default on the part of the tenant in complying with the provisions of Section 12(3) and the same principle applies when specific order is passed directing the petitioner/tenant to deposit the rent within a specified time in order to avail the benefit of stay of the eviction decree passed against him by the Courts below.

13. In addition to the above facts, it is also to be noted that the petitioner has not hesitated to mislead the Court and to make false statements on oath, and after having realised that he was unable to successfully mislead the Court, has come with an affidavit with the statement that he does not want to rely upon his earlier affidavits containing false statements. The statement that the petitioner wants to withdraw his earlier two affidavits disclosing false statements nowhere discloses any sort of remorse for making false statements before the Court and trying to mislead the Court on the material aspect of the case. The statements are required to be made on oath in order to ascertain and establish the truthfulness of the facts stated by the party. A person who files an affidavit with false statements therein, apart from the fact that such person would warrant contempt proceedings for such act on his part, does not deserve any sort of sympathy from the

Court.

14. While rejecting the contention that the petitioner wants to withdraw the earlier affidavits, in the facts and circumstances of the case and for the reasons stated above, the application filed by the applicants needs to be allowed for vacating the order of stay granted by this Court earlier to the execution of the eviction decree against the petitioner along with costs of Rs.5,000/- to be paid by the petitioner to the applicants. It is also further necessary to issue notice to the petitioner as to why he should not be proceeded against for contempt of Court for filing false affidavits and trying to mislead the Court. The Registry, therefore, is directed to register contempt proceedings in that regard which would contain the complete proceedings in the present civil application along with the copy of the writ petition and the order of this Court dated 12-3-1999 in Civil Application No.9927 of 1998 and Civil Application No.2726 of 1999 in Writ Petition No.679 of 1997. The acts on the part of the petitioner being amounting to interference in the administration of justice, the contempt proceedings are required to be registered in terms of the provisions of Section 15 r/w Section 2(c) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India and to place the same before the concerned Bench of this

Court.

15. At this stage, the learned Advocate for the petitioner requests for stay of the order passed today. Considering the facts narrated in the order, I do not find any justification for stay of the order. The request for stay is rejected.

16. Certified copy expedited.